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IN THE
Supreme Court of the United States

October Term, 1926.

No. 362.

LIGGETT & MYERS TOBACCO COMPANY,
Petitioner,

v.
THE UNITED STATES.

On Certiorari to the Court of Claims.

Brief for the Petitioner.

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CERTIORARI TO THE COURT OF CLAIMS.

BRIEF FOR PETITIONER.

OPINION BELOW.

The opinion of the Court of Claims is reported in 61 Ct. Cls. 693 and is printed in the record (R. 41).

JURISDICTION.

The judgment of the Court of Claims was entered February 15, 1926 (R. 46). The petition for writ of certiorari was filed May 3, 1926 (R. 47), under the provisions of the Act of February 13, 1925, Chap. 229, 43 Stat. 936, and was granted October 11, 1926.

THE QUESTIONS.

I. Does Section 177 of the Judicial Code, forbidding the payment of "interest" in cases in the Court of Claims until after judgment is rendered, "unless upon a contract expressly stipulating for the payment of interest," prevent the awarding, in commandeering cases, of a sum, measured by the legal rate of interest, as a part of the *just compensation* to which the citizen is entitled under the Fifth Amendment?

II. Were the tobacco products procured by the United States from petitioner obtained by the United States through the exercise of the power of eminent domain?

STATEMENT.

On August 26, 1918, the Navy Department acting for the President of the United States, under authority delegated by the President August 31, 1917, sent to the petitioner Navy Order No. N-4128 directing and requiring it to deliver at the times and places and in the manner designated therein certain quantities of tobacco and tobacco products. No prices were fixed, other than provisional prices, but petitioner was promised "reasonable and just compensation". The form and contents of Navy Order N-4128 are fully set out in the record (R. 29-37) and need not be repeated here.

The order, by its terms, was placed "pursuant to the provisions of the Acts of Congress, Naval Appropriation Act approved March 4, 1917, and the Urgent Deficiency Act approved June 15, 1917

* * * , and acting under the direction of the President of the United States."

The order by its terms was a command. It said "Compliance with this offer is *obligatory*, and no commercial orders shall be allowed by you to interfere with the delivery herein provided for."

The order (subparagraph (b)) stated that "As it is impracticable to now determine a reasonable and just compensation for the material to be delivered the fixing of the price will be subject to later determination," and petitioner was "assured of a reasonable profit under this order" and that it would be paid a price that was "just and reasonable."

The order stated that it "must be accepted and filled in any event," and that "If order is placed under subparagraph (b) original is to be signed and returned."

Since the order was placed under subparagraph (b), it was signed by the petitioner in the space provided for its signature, and returned to the Navy Department, as required by subparagraph (c) of the order. The words, "The above order is accepted subject to the conditions in subparagraph (b) above," were in the order when it was received by the petitioner and were not supplied or endorsed thereon by it.

Thereafter followed paragraphs with respect to deliveries and bills, and a statement of the number and kind of tobacco products required, together with a list of the provisional prices for the tobacco products mentioned in the said order (R. 31, 32).

On the reverse side of the printed form appeared extracts from the Acts of March 4, 1917 (c. 180, 39

Stat., 1168, 1193), and June 15, 1917 (c. 29, 40 Stat., 182) (R. 33). These extracts from the Acts of March 4, 1917 and June 15, 1917, contained the provisions of said Acts authorizing and empowering the President "in addition to all other existing provisions of law," to requisition supplies; that "Compliance with all such orders shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts theretofore placed with such person;" and also that "the United States" shall make *just compensation* therefor" and if the amount determined by the President as just compensation "is unsatisfactory to the person entitled to receive the same, such person * * * shall be entitled to sue the United States to recover such further sum * * * as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code."

The pertinent provisions of the Act of June 3, 1916, c. 134, p. 120,, 39 Stat. 213-214 (U. S. Comp. Stats. 1918, Sec. 3115g), the Act of March 4, 1917, c. 180, 39 Stat. 1168, 1193, (U. S. Comp. Stats. 1918, Sec. 3115-1/16 b c), the Act of June 15, 1917, c. 29, 40 Stat. 182 (U. S. Comp. Stats. 1918, Sec. 3115-1/16 d), and Sections 145 and 177 of the Judicial Code are printed in the appendix to this brief.

There were three "modifications" of the above-described order, dated September 9, 1918 (R. 37), October 14, 1918 (R. 37), and November 22, 1918 (R. 37, 38), for the purpose only of requisitioning additional supplies. These orders were signed and returned by the petitioner, in accordance with the in-

structions contained therein, in the same manner as the original order (R. 37, 38).

Petitioner, having acknowledged, or "accepted," the orders as aforesaid proceeded promptly to comply with them according to their terms, invoicing the tobacco and tobacco products furnished thereunder at its lowest list prices, less five per cent, amounting in the aggregate to \$483,504.30 (R. 38). At the provisional prices stated in the order and modifications the aggregate value of the supplies so furnished amounted to \$423,893.96, which latter amount was paid to the petitioner between the dates of September 9 and November 23, 1918 (R. 38).

The difference between the amount claimed by the petitioner, i. e. \$483,504.30, and the provisional prices paid by the United States, i. e. \$423,893.96, being \$59,610.34, was withheld from the petitioner; and on February 20, 1919, the Navy Department notified the petitioner that the order was cancelled (R. 38, 39).

After the letter of February 20, 1919, cancelling the order, the Navy Department, on December 4, 1920, sent a letter to the petitioner purporting to amend the order so as to make it "apply under the terms and conditions of subparagraph A thereon, subparagraph B being eliminated," and purporting to fix prices for the supplies furnished by petitioner, which prices so fixed were less than the provisional prices stated in the order, and claiming a refund from the petitioner in the amount of \$4,968.44 (R. 39).

Said letter of December 4, 1920, specifically stated that the prices so fixed were "as just compensation" (R. 40).

Petitioner refused to accept the prices fixed by the Navy Department (R. 40), and after nearly four years spent in the prosecution of its claim before the Secretary of the Navy for just compensation for the property requisitioned as aforesaid, and having been denied relief, it brought this suit in the Court of Claims on August 4, 1924 (R. 1).

Petitioner's claim in the Court of Claims was for *just compensation* under the Fifth Amendment and the Acts of Congress approved March 4, 1917, and June 15, 1917, and it claimed the difference between the market price of the supplies when furnished and the provisional prices paid by the United States, to wit, \$59,003.30 together with interest thereon at the rate of six per cent per annum to make up the full measure of just compensation to which petitioner is entitled under the Constitution and laws of the United States (R. 8).

The Court of Claims found that the prices claimed by the petitioner were "fair and reasonable" (R. 38), and entered judgment for the petitioner in the amount of \$59,610.34, but refused to allow any compensation for the damage done to the petitioner through the refusal of the United States to pay the fair and reasonable value of the supplies at the time they were taken by the United States, basing its refusal on Section 177 of the Judicial Code.

Petitioner now appeals to this Honorable Court to remedy the injustice done by the Court of Claims in so refusing to award it the full measure of just compensation to which it is entitled under the Constitution and laws of the United States and the decisions of this Court.

ARGUMENT.

I.

Where private property is taken by the United States for public use before ascertaining or paying compensation, the owner is not limited to the value of the property at the time of the taking but he is entitled to such addition as will produce the full equivalent of that value paid contemporaneously with the taking. Interest at a proper rate is a good measure by which to ascertain the amount so to be added.

Seaboard Air Line Railway Company v. United States, 261 U. S. 299, 43 Sup. Ct. Rep. 355, 356.

Brooks-Scanlon Corp. v. United States, 265 U. S. 106; 44 Sup. Ct. Rep. 471;

United States v. Benedict, 261, U. S. 294; 43 Sup. Ct. Rep. 354;

United States v. Rogers, 255 U. S. 163; 41 Sup. Ct. Rep. 281.

II.

Petitioner's property was taken by the United States through the exercise of its right of eminent domain.

Fifth Amendment of the Constitution;

Act of June 3, 1916, (Ch. 134, 39 Stat. 213, 214);

Act of March 4, 1917, (Ch. 180, 39 Stat. 1168 1193);

Act of June 15, 1917, (Ch. 29, 40 Stat. 182, 183);
Sections 145 and 177, Judicial Code;
Lawson on Contracts, Section 261;
American Smelting & Refining Co. v. United States, 42 Sup. Ct. Rep., 420, 421;
The Atlantic Refining Co. v. United States, 59 Ct. Cls. 108;
Seaboard Air Line Railway Co. v. United States, supra;
Brooks-Scanlon Corp. v. United States, supra;

III.

Since Congress has no power to limit the right to just compensation guaranteed by the Fifth Amendment, Section 177 of the Judicial Code does not apply to this case.

Brooks-Scanlon Corp. v. United States, supra;
United States v. Benedict, supra;
Seaboard Air Line Railway Company v. United States, supra;
Monongahela Navigation Company v. United States, 148 U. S. 312; 13 Sup. Ct. Rep. 622.
United States v. New York, 160 U. S. 598, 16 Sup. Ct. Rep. 402;
Plymouth Coal Company v. Pennsylvania, 232 U. S. 531, 34 Sup. Ct. Rep. 359;
National Defense Act of June 3, 1916.

I.

Where private property is taken by the United States for public use before ascertaining or paying compensation, the owner is not limited to the value of the property at the time of the taking but he is entitled to such addition as will produce the full equivalent of that value paid contemporaneously with the taking. Interest at a proper rate is a good measure by which to ascertain the amount so to be added.

Argument in support of this point is unnecessary. It is stated in practically the identical language of this Court in *Seaboard Air Line Railway Company v. United States*, 43 Sup. Ct. Rep. 354, 356, and is supported by the Court's decision in that case and its decisions in,

Brooks-Scanlon Corp v. United States, supra;
United States v. Benedict, supra; and
United States v. Rogers, supra.

These decisions limit our questions here to whether petitioner's property was taken by the United States through the exercise of its right of eminent domain, and, if so, whether there is any bar to an award by the Court of Claims of full and just compensation for the property so taken.

II.

Petitioner's property was taken by the United States through the exercise of its right of eminent domain.

There were no negotiations of any kind between the petitioner and the United States upon which a contract might be based or from which one might be implied. There were none of the usual discussions which ordinarily precede an agreement or contract to purchase or sell. There were no questions as to price, quantity, time or place of delivery, or terms of payment.

It was not the intention of the Navy Department to enter into an agreement. On the contrary, it relied explicitly upon the authority conferred by the Acts of Congress of March 4, 1917, and June 15, 1917, to command the petitioner to supply the required materials in the amounts and at the times and places specified by it. Not only does the order (R. 8) quote excerpts of said Acts of Congress to show that Congress had empowered the President to *place orders* which should be *obligatory*, but its phraseology follows that of the Act so as to make it doubly sure that the goods were being requisitioned and that there could be no escape from the fulfillment of the order.

The President did not require the authority contained in the Acts of March 4, 1917, and June 15, 1917, *to enter into a contract* for supplies needed by the Navy. Nor can there be a contract where the power of Government was invoked as it was in this case to coerce and compel the petitioner to fill its orders. It is well settled that:

“Whenever the parties are not at arm’s length, but one is in a position to dictate, the courts will treat agreements which are influenced by threats of injury to, or withholding of property, as made under duress” (Lawson on Contracts, Sec. 261, and cases cited in 9 Cyc., 451).

Is it an offer to contract when the Government says to the citizen: “Give me what I want of your goods; deliver them where I say deliver them; set aside all commercial orders, no matter at what loss, and give priority to my demands; if you do not I have power to take your plant and all your property and to fine and imprison your officers; this order is *obligatory!*”

Is “acceptance” of such an order necessary; and, if accepted, does a contract result? We think not. The order speaks for itself. It either is, or is not, a requisition, and if it is a requisition “acceptance” does not change it to something different. This Court said in *American Smelting & Refining Co. v. United States*, 42 Sup. Ct. Rep. 420, 421, that if an order is a compulsory requisition no acceptance is necessary. Of what effect then is the “acceptance”? Does it transform a compulsory requisition, based upon the power inherent in the sovereign to take private property for public use into an “offer and acceptance” and, therefore, a contract? The Court below seemed to think that it did, and thereby it was led into error.

What would have been the result if the petitioner had refused to sign the order, as required by the Navy Department? Would its rights have been different? If so, what right did it waive by signing the

order? It could not have enjoined the Government from taking its property.

Relying upon the decisions of this Court, we have no hesitancy in saying that its right to just compensation would have been no different whether it signed or refused to sign. But under the decision of the Court of Claims, in the case of *The Atlantic Refining Company v. United States*, 59 Ct. Cls. 108, petitioner's position with reference to compensation *would have been better had it refused to accept the order.*

In the case of *The Atlantic Refining Company, supra*, the plaintiff received the same kind of an order, issued pursuant to the same Acts of Congress and *refused to accept it*. The Court held that there was no contract, but a compulsory requisition and that the plaintiff was *entitled to interest* upon the market price at the time its goods were taken, to date of the judgment, to make up the full measure of just compensation. It found Section 177 of the Judicial Code no bar to such award. Why, then, the distinction in the case at bar?

The one possible point of distinction between the *Atlantic Refining Co. case, supra*, and the case at bar, is that, in the former, the plaintiff refused to "accept" the order by signing it in the space provided for that purpose, whereas, the petitioner "signed on the dotted line". Both delivered the materials requisitioned by the orders, and both refused to accept the prices fixed by the Navy Department. Both applied to the Executive Department for relief and both were dissatisfied with the measure of compensation awarded. Both sued in the Court of Claims under authority of the Acts of

March 4, 1917, and June 15, 1917, and both claimed interest on the amounts of the unpaid balances unjustly withheld by the Executive Department.

The Court of Claims held that the Atlantic Refining Company was entitled to interest under the decision of this Court in the *Seaboard Air Line case*, *supra*, by virtue of its having *refused to accept* the order, whereas, petitioner, having indicated an "acceptance" or willingness to deliver the goods in compliance with the terms of the order, protesting only the price suggested, could not claim that its goods were commandeered. Such a distinction, we insist, is contrary to law as well as to sound principles of justice and good government. In effect, the Court says that preference shall be given to the recalcitrant producer or manufacturer who defies the mandates of the President in time of war or National Emergency over he who says, "I accept, saving only the question of compensation, and will comply". Can such things be?

On no other ground than that stated above can the decision of the Court below be reconciled with its own decision in the *Atlantic Refining Company case*, *supra*, and on no other ground can we account for the Court's failure to follow the decisions of this Court in the *Brooks-Scanlon Corp.* and *Seaboard Air Line Railway Company cases*, *supra*.

The Court below cited in its opinion the decision of this Court in *American Smelting & Refining Company v. United States*, 259 U. S. 75, 42 Sup. Ct. Rep. 420, but it is not in point. In the *American Smelting Company case* there was an express contract for delivery of copper to the Government at an agreed price. The order did not even purport to be a requi-

sition; nor did it purport to have been issued under any Act of Congress authorizing the taking of private property for a public use. The Solicitor General properly distinguishes this case in his brief on the petition for certiorari, at page 8.

The case of *North American Transportation & Trading Company v. United States*, 253 U. S. 330, 40 Sup. Ct. Rep. 518, cited by the Court below, is not in point, because the suit was brought upon implied contract; and the Court of Claims had no jurisdiction of the cause except upon implied contract of the United States to pay for the land taken without condemnation proceedings. (Section 145, Judicial Code.) The same may be said of the case of *United States v. Great Falls Mfg. Company*, 112 U. S. 645, 5 Sup. Ct. Rep. 306, cited by the Court below.

The case of *Klebe, et al v. United States*, 263 U. S. 188, 44 Sup. Ct. Rep. 58, cited by the Court below, is not in point because in that case the Government took the property (steam shovels) *under a claim of title by virtue of an express contract*.

The cases of *United States v. State of North Carolina*, 136 U. S. 211, 10 Sup. Ct. Rep. 920 (re liability of a State to pay interest on its bonds after the principal has become due), and *United States, ex rel Angarica v. Bayard*, 127 U. S. 251, 8 Sup. Ct. Rep. 1156 (where only contractual relations were involved), both of which cases were cited by the Court below, are wholly inapplicable to the case at bar.

Under *exactly the same facts* as in the case at bar, the Court of Claims held in the case of *American Tobacco Co. v. United States*, 58 Ct. Cls. 717, that the order was a requisition obligatory in its terms, and that the claimant was entitled to "just compen-

sation." The question of interest was not raised in the *American Tobacco Company case*; and when it was raised by the petitioner in this case, the Court of Claims, on the same facts exactly as in the *American Tobacco Company case*, held that the goods were furnished under a contract and interest was barred by Section 177 of the Judicial Code.

If the order in this case was not a mandate of the President, we can not imagine what was lacking to make it such. It was obligatory in its terms. It referred expressly to the laws authorizing the President to requisition materials and quoted at length the provisions of such laws. It stated no price and asked no questions. It *demand*ed that it be signed and returned and that it be complied with *in any event*. If this was not sufficient to make the order a mandate, there was the Act of June 3, 1916, empowering the President to issue such obligatory orders and making non-compliance with them a felony punishable by fine and imprisonment.

We may well wonder how far, in the opinion of the Court of Claims, a citizen must persist in his refusal to comply in order to be entitled to just compensation. Can he stop short of felony or must he carry his resistance to the prison door? May his resistance be mild and equivocal or must it be determined and unequivocal? Does he forfeit his Constitutional right if he yields and delivers the goods, and must he await the arrival of the armed forces of the United States to take them from him? Absurd though these questions may appear, they are what a citizen will naturally ask if he is told that in order to obtain just compensation for property requisitioned by his Government in time of war, *he must resist the order and refuse to accept it.*

III.

Since Congress has no power to limit the right to just compensation guaranteed by the Fifth Amendment, Section 177 of the Judicial Code does not apply to this case.

This claim is "founded upon the Constitution of the United States" and a "law of Congress" and hence Section 177 of the Judicial Code is inapplicable.

Under the Fifth Amendment, if the Government takes private property for public use, it must pay just compensation. The Acts of Congress of March 4, 1917, and June 15, 1917, authorized the President to take private property for public use and to award just compensation for the property so taken. Congress must be presumed to have had the guaranty of the Fifth Amendment in mind when it enacted these laws. It must also be presumed to have known that the question of what is just compensation is a judicial question and can not be finally determined by any other department of the Government. Therefore, when it, by the same Acts, authorized dissatisfied owners to sue in the Court of Claims for just compensation it must have had in mind just compensation within the meaning of the Constitution and not as limited by Section 177 of the Judicial Code or by any other Act of Congress.

Likewise, when Congress, by the Acts of March 4, 1917, and June 15, 1917, authorized the Court of Claims to entertain suits against the United States for just compensation for materials requisitioned, it must be presumed to have been familiar with the decisions of this Court defining the meaning of "just

compensation." Consequently, Congress knew that there could be no such thing as "just compensation, subject to the limitations of Section 177 of the Judicial Code," or any other limitations, and it never intended to limit the Court's awards to anything short of just compensation.

The Act of June 15, 1917, provides that "such person * * * shall be entitled to sue the United States to recover such further sum as * * * just compensation." This is substantially the same language as was used in the Lever Act (40 Stat. 276) which (Section 10) authorized the claimant—

"to sue the United States to recover such further sum as * * * will make up * * * just compensation * * *."

In the *Seaboard Air Line case*, *supra*, this Court said:

"The owner's right does not depend upon contract, express or implied. A promise to pay is not necessary. None is alleged. This suit is part of the authorized procedure initiated by the United States for the condemnation of the land. The owner was not satisfied with the amount fixed by the President and sued. A necessary condition of the taking is the ascertainment and payment of just compensation * * * . The only question here is whether payment at a subsequent date of the value of the land at the date of taking possession is sufficient to constitute just compensation." (43 Sup. Ct. Rep. 356.)

The case of *Brooks-Scanlon Corp.*, *supra*, was instituted in the Court of Claims under authority of

said Act of June 15, 1917, and neither that Court nor this Court found Section 177 a bar to the allowance of full and complete compensation in that case, but on the contrary it was specifically held that interest was allowable so as to make the measure of just compensation equivalent to market value paid contemporaneously with the taking.

These cases are wholly unlike *United States v. North American, etc., Co.*, 253 U. S. 330, which was based on an implied promise of the United States to pay for property appropriated by it. Of that case the Court, in the *Seaboard Air Line* case said:

“That was a suit in the Court of Claims, based on an implied promise of the United States to pay for property appropriated by it
* * *.” (43 Sup. Ct. Rep. 356.)

The only jurisdiction the Court of Claims had to grant relief in the *North American, etc., Co.*, case, was to be found in Section 145 of the Judicial Code. In the case at bar it has jurisdiction to award just compensation under the provisions of the Act of June 15, 1917.

Since the claim in the case at bar is not based upon an implied promise, but is founded upon the Constitution of the United States and a law of Congress in pursuance thereof, Section 177 of the Judicial Code is inapplicable and the petitioner is entitled to the full measure of just compensation guaranteed by the Constitution, which must, necessarily include interest on unpaid balances in order to compensate petitioner as fully as though market value had been paid at the time the property was taken.

Seaboard Air Line Railway Company v. United States, 261 U. S. 299, 304, 43 Sup. Ct. Rep. 355;

Brooks-Scanlon Corp. v. United States, 265 U. S. 106, 44 Sup. Ct. Rep. 471;

United States v. Benedict, 261 U. S. 294, 43 Sup. Ct. Rep. 354;

United States v. Rogers, 255 U. S. 163, 41 Sup. Ct. Rep. 281.

As stated in the opinion of this Court in the *Seaboard Air Line* case—

“Just compensation is provided for by the Constitution, and the right to it can not be taken away by statute.”

Therefore, had Congress set about with deliberate intent to limit the awards of the Courts to less than just compensation, its act would have been unconstitutional, (*United States v. New York*, 160 U. S. 598, 622). How then can a statute (Section 177 of the Judicial Code) which was obviously not so intended, be construed as limiting the awards of the Court of Claims in commandeering cases to less than just compensation?

Since any effort to deny or limit the right to full just compensation, including interest as a part of the measure or as compensation for delay in payment, would be beyond the power of Congress, it should be presumed that Congress had no such intention. (*Plymouth Coal Co. v. Pennsylvania*, 232 U. S. 531, 34 Sup. Ct. Rep. 359.)

CONCLUSION

If, in our argument, we have touched but lightly upon important principles of Constitutional law involved in this case it is because we feel that every principle for which we contend has been correctly decided by this Court in—

Monongahela Navigation Co. v. United States,
148 U. S. 312, 13 Sup. Ct. Rep. 622, 626;
Seaboard Air Line Ry. Co. v. United States,
supra;
Brooks-Scanlon Corp. v. United States, *supra*;

and we are relying with confidence upon the Court's decision in those cases.

The situation presented in this case calls for the annunciation of no new principles of constitutional construction, but for strict adherence to the principles previously announced by this Court, and departed from by the Court below. Such departures are dangerous, and this Court alone has power to prevent them.

As stated by Mr. Justice Bradley in *Boyd v. United States*, 116 U. S. 616, 635; 6 Sup. Ct. Rep. 524, quoted by Mr. Justice Brewer in *Monongahela Navigation Company v. United States*, *supra*.,

“Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half

their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis.*"

It is respectfully submitted that the judgment should include interest at a fair rate to make up the full measure of just compensation to which the petitioner is entitled under the Constitution, and that the case should be remanded to the Court of Claims with directions so to revise its judgment.

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APPENDIX.

The pertinent portions of the Act of June 3, 1916, (Ch. 134, Sec. 120), provide:

Sec. 3115(g). The President, in time of war or when war is imminent, is empowered, through the head of any department of the Government, in addition to the present authorized methods of purchase or procurement, to place an order with any individual, firm, association, company, corporation, or organized manufacturing industry for such product or material as may be required, and which is of the nature and kind usually produced or capable of being produced by such individual, firm, company, association, corporation, or organized manufacturing industry.

Compliance with all such orders for products or material shall be obligatory on any individual, firm, association, company, corporation, or organized manufacturing industry or the responsible head or heads thereof and shall take precedence over all other orders and contracts theretofore placed with such individual, firm, company, (association, corporation, or organized manufacturing industry, and any individual, firm, association, company, corporation, or organized manufacturing industry or responsible head or heads thereof owning or operating any plant equipped for the manufacture of arms or ammunition, or parts of ammunition, or any necessary supplies or equipment for the Army, and any individual, firm, association, company, corporation, or organized manufacturing industry or the responsible head or heads thereof owning or operating any manufacturing plant, which, in the opinion of the Secretary of War shall be capable of being

readily transformed into a plant for the manufacture of arms or ammunition, or parts thereof, or other necessary supplies or equipment, who shall refuse to give to the United States such preference in the matter of the execution of orders, or who shall refuse to manufacture the kind, quantity, or quality of arms or ammunition, or the parts thereof, or any necessary supplies or equipment, as ordered by the Secretary of War, or who shall refuse to furnish such arms, ammunitions, or parts of ammunition, or other supplies or equipment, at a reasonable price as determined by the Secretary of War, then, and in either such case, the President, through the head of any department of the Government, in addition to the present authorized methods of purchase or procurement herein provided for, is hereby authorized to take immediate possession of any such plant, or plants, and through the Ordinance Department of the United States Army, to manufacture therein in time of war, or when war shall be imminent, such product or material as may be required, and any individual, firm, company, association, or corporation, or organized manufacturing industry, or the responsible head or heads thereof, failing to comply with the provisions of this section shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment for not more than three years and by a fine not exceeding \$50,000.

The compensation to be paid to any individual, firm, company, association, corporation, or organized manufacturing industry for its products or material, or as rental for use of any manufacturing plant while used by the United States, shall be fair and just. (39 Stat.)

The pertinent portions of the Act of March 4, 1917, (Ch. 180, 39 Stat. 1168, 1193), provide:

(b) That in time of war, or national emergency * * * the President is hereby authorized and empowered, in addition to all other existing provisions of law:

First. Within the limits of the amount appropriated therefor, to place an order with any person for such ships or war material as the necessities of the Government, to be determined by the President, may require and which are of the nature, kind, and quantity usually produced or capable of being produced by such person. Compliance with all such orders shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts theretofore placed with such person. If any person owning, leasing, or operating any factory equipped for the building or production of ships or war material for the Navy shall refuse or fail to give the United States such preference in the execution of such an order, or shall refuse to build, supply, furnish, or manufacture the kind, quantity, or quality of ships or war material so ordered at such reasonable price as shall be determined by the President, the President may take immediate possession of any factory of any such person, or of any part thereof without taking possession of the entire factory, and may use the same at such times and in such manner as he may consider necessary or expedient. * * *

Third. To require the owner or occupier of any factory in which ships or war material are built or produced to place at the disposal of the United States the whole or any part of the output of such factory, and, within the limits of the

amounts appropriated therefor, to deliver such output or parts thereof in such quantities and at such times as may be specified in the order at such reasonable price as shall be determined by the President.

Fourth. To requisition and take over for use or operation by the Government any factory, or any part thereof without taking possession of the entire factory, whether the United States has or has not any contract or agreement with the owner or occupier of such factory.

That all authority granted to the President in this paragraph, to be exercised in time of national emergency, shall cease on March first, nineteen hundred and eighteen.

(d) That whenever the United States shall cancel or modify any contract, make use of, assume, occupy, requisition, or take over any factory or part thereof, or any ships or war material, in accordance with the provisions of paragraph (b), it shall make just compensation therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid fifty per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as added to said fifty per centum shall make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The pertinent portions of the Act of June 15, 1917, (Ch. 29, 40 Stat. 182, 183), provide that:

The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

(a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind and quantity usually produced or capable of being produced by such person.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts placed with such person. If any person owning any ship, charter, or material, or owning, leasing, or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the execution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities, or qualities of the ships or material so ordered, at such reasonable price as shall be determined by the President, the President may

take immediate possession of any ship, charter, material, or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary or expedient.

Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time * * *.

The pertinent portions of the Judicial Code are as follows:

Sec. 145. The Court of Claims shall have jurisdiction to hear and determine the following matters.

First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regula-

tion of an Executive Department, upon any contract, express or implied, with the Government of the United States, or for damages liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: * * *.

Sec. 177. No interest shall be allowed on any claim up to the rendition of the judgment by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest, except that interest may be allowed in any judgment of any court rendered after the passage of the Revenue Act of 1921 against the United States for any internal revenue tax erroneously or illegally assessed or collected, or for any penalty collected without authority, or any sum which was excessive or in any manner wrongfully collected under the internal revenue laws. (Sec. 177 Jud. Code, 36 Stat. L., 1141, as amended by Act of Nov. 23, 1921, 42 Stat. L., 316.)

